

Decision 06-05-035 May 25, 2006

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of  
CTC Communications Group, Inc., CTC  
Communications Corp. d/b/a  
CT Communications Corp. (U-5532-C) and  
Choice One Communications Inc. for Approval  
of a Transfer of Control of CTC Communications  
Corp.

Application 06-02-025  
(Filed February 23, 2006)

**OPINION AUTHORIZING INDIRECT TRANSFER OF CONTROL  
OF CTC COMMUNICATIONS CORP. (U-5532-C)**

**Summary**

This decision grants the application of CTC Communications Group, Inc. (CTC), CTC Communications Corp. (CTC Communications) and Choice One Communications, Inc. (Choice 1) (together, "Applicants") for approval of a merger of CTC Communications and Choice 1 and a sale of stock that will result in the transfer of control of CTC Communications (U-5532-C) to the corporation surviving at the completion of the CTC-Choice 1 merger (Surviving Corporation),<sup>1</sup> pursuant to Pub. Util. Code §§ 852 and 854.<sup>2</sup>

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<sup>1</sup> According to the application the name of Surviving Corporation has not yet been designated.

<sup>2</sup> All Code references are to the Public Utilities Code, unless otherwise stated.

## **Parties to the Transaction**

CTC Communications is a Massachusetts corporation and is currently a subsidiary of CTC. CTC Communications holds a Certificate of Public Convenience and Necessity (CPCN) authorizing the provision of resold local exchange and interexchange services in this state.<sup>3</sup>

CTC is a Delaware corporation with headquarters located at Waltham, Massachusetts. CTC is a wholly-owned subsidiary of Columbia Ventures Broadband, LLC (CVB). CVB, a Washington limited liability company, is a wholly-owned subsidiary of Columbia Ventures Corporation (CVC). According to the application, CVC owns and operates a portfolio of telecommunications companies and a small number of manufacturing businesses around the world. The application further states that although the Federal Communications Commission (FCC) has authorized CVC to provide domestic interstate and international telecommunications services, neither CVC nor CVB currently provide telecommunications services.

A U. S. citizen, Mr. Kenneth Peterson, Jr., holds a 100% ownership interest in CVC. Mr. Peterson is Chairman of the Board of CTC and Chief Executive Officer, Chairman and Founder of CVC. He is also the sole manager of CVB. The business address of CVB, CVC, and Mr. Peterson is 203 Park Plaza Drive, Suite 270, Vancouver, Washington, 98684.

Choice 1 is a Delaware corporation with headquarters located in Rochester, New York. According to the application, Choice 1 has several subsidiaries that provide communications and information services to small and

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<sup>3</sup> In Decision (D.) 95-11-038 and D. 97-01-012, we granted CTC Communications, under its former name, Computer Telephone Corp., authority to provide resold interexchange and local exchange services.

medium-sized businesses mostly in the Northeast and Midwest. The application states that Choice 1 is authorized to operate pursuant to authority held by its subsidiaries in the following states: Connecticut, Illinois, Indiana, Maine, Massachusetts, Michigan, New Hampshire, New York, Ohio, Pennsylvania, Rhode Island, and Wisconsin. The subsidiaries of Choice 1 do not provide telecommunications services in California.

### **Proposed Transaction**

Under this transaction, CTC will merge with Choice 1, forming an unnamed Surviving Corporation. After this transaction, CVB will own 50% of the outstanding capital stock of Surviving Corporation, and stockholders of Choice 1 at the time of closing will hold the remaining 50% of the outstanding capital stock. However, after the closing, CVB may obtain up to an additional 20% of the voting stock of Surviving Corporation. Therefore, CVB will hold between 50% and 70% of Surviving Corporation, and the stockholders of Choice 1 will hold between 30% and 50% of Surviving Corporation.

As a result of this transaction, CTC Communications will become a subsidiary of Surviving Corporation, rather than CTC.

CTC Communications will continue to hold its CPCN to provide telecommunications services in California.

Applicants represents that this change in ownership will benefit CTC Communications and its customers, because it will strengthen CTC's financial position and increase the scope of CTC Communications, so that the company can compete more effectively in the highly competitive market for telecommunications services.

Applicants further represent that the transaction will be transparent to customers. There will be no change in the name or management of CTC

Communications because the transaction will be completed at the parent company level only. Customers will continue to receive service from CTC Communications under the same rates, terms, and conditions after the transaction is approved.

### **Discussion**

Under § 852, no public utility, and no subsidiary, affiliate of, or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under the laws of this state, without prior Commission authorization. Section 854 further requires Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state . . . “. The purpose of these and related sections is to enable the Commission, before any transfer of a public utility is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation in which a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Therefore, although CTC and Choice 1 do not hold CPCNs to provide telecommunications services in California, they must meet the requirements for issuance of a CPCN because, as a result of their merger, Surviving Corporation is acquiring indirect control of CTC Communications.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a resale provider of local exchange and interexchange service must demonstrate

that it has a minimum of \$25,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

The application includes financial statements and other evidence that demonstrates that CTC and Choice 1 have sufficient resources to meet our financial requirements. Since CTC Communications is expected to continue to operate under the same day-to-day management, we find that our requirement for technical expertise is satisfied, for the purposes of this transaction only.<sup>4</sup> The transaction may improve the financial position of CTC Communications and its ability to compete in the telecommunications marketplace. In addition, this transaction will be transparent to customers. Therefore, the proposed transaction is in the public interest.

Therefore, we will grant the application pursuant to §§ 852 and 854. Surviving corporation will be required to notify the Director of Telecommunications Division of any acquisition or change of its name.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3168 dated March 2, 2006, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

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<sup>4</sup> We made no determination that CTC and Choice 1 would otherwise meet the technical and managerial requirements for authorization to provide telecommunications services in this state.

### **Comments on Draft Decision**

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Assignment of Proceeding**

Rochelle B. Chong is the Assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. CTC Communications is a Massachusetts corporation and a wholly owned subsidiary of CTC, a Delaware corporation.
2. In D.95-11-038 and D.97-01-012, CTC Communications was granted a CPCN authorizing the provision of limited resold local exchange and interexchange services in California.
3. As a result of the merger of CTC and Choice 1, CTC Communications will become a wholly-owned subsidiary of Surviving Corporation.
4. CTC and Choice 1 do not hold CPCNs that authorize them to provide telecommunications services in California.
5. There will be no change in the name or day-to-day management of CTC Communications as a result of the transaction.
6. CTC Communications customers will continue to receive service under the same rates, terms, and conditions after the transaction.
7. CTC and Choice 1 have sufficient financial resources to meet the Commission's requirements to provide resold local exchange and interexchange services.

8. This transaction will enhance the scope of CTC Communications and expand its access to financial resources.

9. Since CTC Communication's day-to-day management will remain the same, CTC and Choice 1 have met the requirements for technical and managerial expertise to provide telecommunications services, for the purposes of this transaction only.

10. Notice of this application appeared on the Commission's Daily Calendar on February 28, 2006.

11. There were no protests to this application.

12. No hearings are necessary.

### **Conclusions of Law**

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a resale provider of local exchange and interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. CTC and Choice 1 meet the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and interexchange telecommunications services, for the purposes of this transaction only.

3. This transaction is in the public interest.

4. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. Pursuant to Public Utilities Code Sections 852 and 854, the application of CTC Communications Group, Inc. (CTC), CTC Communications Corp. (CTC Communications), and Choice One Communications Inc. (Choice 1) for approval of the indirect transfer of control of CTC Communications to the unnamed surviving corporation after the merger of CTC and Choice 1 is approved.
2. The unnamed surviving corporation shall advise the Director of Telecommunications Division in writing of any name acquisition or change.
3. Application 06-02-025 is closed.

This order is effective today.

Dated May 25, 2006, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners